**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 407/2004

ASHOK KUMAR JAIN & ANR.
v
RAJESH AGARWAL & ANR.

Date of Judgment: NOVEMBER, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. G.R. Saini for
Dr. P.C. Jain for the appellants.
Mr. M.C. Gupta for the respondents.

By Court:

The appellants are challenging the Order dated 20.11.03 passed by the Addl. District Judge No.2, Jaipur City, Jaipur whereby the learned Judge has allowed the application filed by the appellant under Order 39, Rule 1 and 2 of the Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) restraining the defendant from selling, mortgaging or transferring the property in question to a third party.

The brief facts of the case are that the defendant-appellant No.2 is a registered partnership firm, of which appellant No.1 and proforma respondent No.2, Mr. Ashok Kumar Jain and Smt. Padma Devi Jain respectively, are partners. Since the appellant No.1 and respondent No.2 needed some financial assistance, they

contacted one Mr. Nirmal Kumar @ Rakesh kumar Agrawal, Proprieter of M/s. Munna Lal Surajmal and requested him to get some loan for their partnership firm. Consequently, Mr. Rakesh Kumar Agrawal contacted the plaintiff, Rajesh Agrawal and convinced him to extend a loan of Rs. Two lacs to the defendant-appellant. Therefore, the plaintiff-respondent issued a cheque for a sum of Rs. Two lacs on 23.10.02. However, when the plaintiff requested the appellant to return the said money, they refused to do so. Therefore, the plaintiff had no option but to file a suit for recovery. Alongwith the suit he also filed a temporary injunction application under Order 39 Rule 1 and 2 of the Code. He subsequently pleaded that in order to defeat the recovery rights of the plaintiff, the defendant-appellants were trying to sell the plots bearing No. A-9 and A-10, situated at Burmese Colony in front of Satyasai College, Jaipur.

The appellants while filing their written statement denied all the averments made by the plaintiff and further denied the fact that they were trying to sell the house situated at plots No. A-9 and A-10 at Burmese Colony, Jaipur. After hearing both the parties, the learned Judge granted a temporary injunction in favour of the plaintiff. Hence this appeal before this Court.

Dr. P.C. Jain, the learned counsel for the appellant, has

argued that the privity of contract was not between the plaintiff and the defendants, as the loan was not given directly by the plaintiff to the defendant-appellants. Moreover, the learned Judge had wrongly concluded that the prima facie case existed in favour of the plaintiff.

On the other hand, Mr. M.C. Gupta, learned counsel for the plaintiff-respondent has stated that defendant-appellants had raised loans from large number of peoples, who had filed different suits for recovery of amounts against the defendant-appellant. In about thirty-four cases, excluding the present one, temporary injunctions were granted by the learned trial Court. In those cases thirty-four appeals were filed before this Court. In all those cases, this Court was pleased to dismiss the appeals and to uphold the grant of temporary injunction in favour of the plaintiffs. In order to substantiate his case the learned counsel has placed a copy of the judgment delivered in M/s. Alwar Prakashan & Anr. Vs. K.K. Srimal & Anr. (SBCMA No. 2477/04 decided on 18.10.05). Subsequently, the appellant had also filed review petition against the order dated 18.10.05. However, vide order dated 11.9.06, the said review petition was dismissed by this Court. Thereafter, no further Special Leave Petition had been filed. Therefore, the said judgments have attend finality.

We have heard both the learned counsels and have

perused the impugned orders as well as the judgment in the case of M/s. Alwar Prakashan (supra).

Allegedly, the appellant had raised a loan amount of Rs. 1,10,10,000/- from thirty seven different creditors. However, the appellants were unable to repay the loan. Therefore, all the creditors had filed suits for recovery of their respective amounts against the appellants. In order to secure the loan, it seems that the appellant had mortgaged same property, namely house located at plots No. A-9 and A-10, opposite Satyasai Colloge, Burmese Colony, Jaipur. In all the suits, the learned Judge had granted a temporary injunction in favour of the plaintiff and had restrained the defendant-appellant from alienating or transferring the said property mentioned above. The appellant had filed appeals before this Court which were dismissed by this Court, as stated in the case of M/s. Alwar Prakashan (supra).

It is interesting to note that in some of the appeals decided by this Court, the learned trial court had passed its order under Order 38 Rule 5 of the Code. Since this Court had upheld the grant of temporary injunction in favour of the plaintiff in other cases, this Court is bound under judicial discipline to pass the same order. Moreover, since the suit for recovery of money has been filed by the plaintiff, it is imperative that the defendant be restrained from

alienating the property mentioned above. In case he is not prevented from alienating the said property, a possible decree granted in favour of the plaintiff may not be satisfied.

In the result, this appeal has no force. It is, hereby, dismissed. There shall be no order as to costs.

(R.S. CHAUHAN) J.

MRG.